

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

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CARL HUTTO, #148 575

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Plaintiff,

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v.

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2:06-CV-328-WKW  
(WO)

TERRANCE ROSE, *et al.*,

\*

Defendants.

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**RECOMMENDATION OF THE MAGISTRATE JUDGE**

On 14 July 2006 Plaintiff filed a response to Defendants' special report filed on 16 June 2006. Upon review of the response, the court finds that the pleading also contains a request to dismiss Defendant Jamie McCarty ["McCarty"] from this cause of action. (*See* Doc. No. 21.) Upon review of the motion to dismiss McCarty, the court concludes that the motion should be granted.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. Plaintiff's 14 July 2006 pleading, construed to include a Motion to Dismiss McCarty (Doc. No. 60), be GRANTED;
2. McCarty be DISMISSED with prejudice as a party to this complaint; and
3. This case, with respect to the remaining defendants, be referred to the undersigned for additional proceedings.

It is further

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before 17 August 2006. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981

Done this 2<sup>nd</sup> day of August 2006.

/s/ Vanzetta Penn McPherson  
VANZETTA PENN MCPHERSON  
UNITED STATES MAGISTRATE JUDGE